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Supreme Court of the United States

OCTOBER TERM, 1958

No. 937

DIANA K. POWELL, *Petitioner*,

v.

THE WASHINGTON POST COMPANY,

AND

JAMES P. MITCHELL, Secretary of Labor for the United States of America, *Respondents*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT THE WASHINGTON POST COMPANY IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court is reported at 168 F.Supp. 41. The opinion of the Court of Appeals is unofficially reported at 37 CCH Lab. Cas. para. 65, 384 and at 14 W.H. Cas. 140.

STATUTES AND RULES INVOLVED

Statutes

Fair Labor Standards Act of June 25, 1938, c. 676, § 11(a), 52 Stat. 1066, as amended, 29 U.S.C. § 211(a) (1952):

> "The Administrator or his designated representatives may investigate and gather data regarding the wages, hours, and other conditions and practices of employment in any industry subject to this Act, and may enter and inspect such places and such records (and make such transcriptions thereof), question such employees, and investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act, or which may aid in the enforcement of the provisions of this Act. Except as provided in section 12 and in subsection (b) of this section, the Administrator shall utilize the bureaus and divisions of the Department of Labor for all the investigations and inspections necessary under this section. Except as provided in section 12, the Secretary of Labor shall bring all actions under section 17 to restrain violations of this Act."

Fair Labor Standards Act of June 25, 1938, c. 676, § 15(a), 52 Stat. 1068, as amended, 29 U.S.C. § 215(a) (1952):

> ". . . It shall be unlawful for any person—
>
> * * *
>
> "(3) to discharge or in any other manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act, or has testified or is about to testify in any such proceeding, or has served or is about to serve on an industry committee; . . ."

Fair Labor Standards Act of June 25, 1938, c. 676, § 16, 52 Stat. 1069, as amended, 29 U.S.C. § 216 (1952):

"(a) Any person who willfully violates any of the provisions of section 15 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment for not more than six months, or both. ...

"(b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated. No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought. ...

"(c) The Secretary of Labor is authorized to supervise the payment of the unpaid minimum wages or the unpaid overtime compensation owing to any employee or employees under section 6 or section 7 of this Act, and the agreement of any employee to accept such payment shall upon payment in full constitute a waiver by such employee of any right he may have under subsection (b) of this section to such unpaid minimum wages or unpaid overtime compensation and an additional equal amount as liquidated damages. When a written request is filed by any employee with the Secretary of Labor claiming unpaid minimum wages or unpaid overtime compensation under section 6 or section 7 of this Act, the Secretary of Labor may bring an action in any court of compe-

tent jurisdiction to recover the amount of such claim. . . ."

Fair Labor Standards Act of June 25, 1938, c. 676, § 17, 52 Stat. 1069, as amended, 29 U.S.C. § 217 (Supp. V, 1958):

> "The district courts . . . shall have jurisdiction, for cause shown, to restrain violations of section 15: *Provided*, That no court shall have jurisdiction, in any action brought by the Secretary of Labor to restrain such violations, to order the payment to employees of unpaid minimum wages or unpaid overtime compensation or an additional equal amount as liquidated damages in such action."

Federal Rules of Civil Procedure

Rule 19(a):

> "(a) NECESSARY JOINDER. Subject to the provisions of Rule 23 and of subdivision (b) of this rule, persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or, in proper cases, an involuntary plaintiff."

QUESTIONS PRESENTED

(1) Did the court below properly conclude that the Fair Labor Standards Act makes no provision for a civil action by an employee for reinstatement after discharge in alleged violation of Section 15(a)(3) of the Act?

(2) Where the Secretary of Labor investigated an employee's complaint that she was discharged from her employment in violation of Section 15(a)(3) of the

Act and declined to bring an action against the employer for reinstatement of such employee, did the court below properly conclude that the employee's appeal was to the discretion of the Secretary of Labor and that he could not be involuntarily joined as a party plaintiff and required to bring this action?

(3) Should this court review a unanimous ruling by the United States Court of Appeals for the District of Columbia Circuit which is:

(a) clearly correct;

(b) admitted by Petitioner to be consistent with decisions of the Second and Third Circuits;

(c) not claimed by Petitioner to be in conflict with any decision of this Court or of any circuit court;

(d) and supported by a clear expression of the intent of Congress;

upon Petitioner's contention that the circuit courts, including the court below, have misinterpreted the language of the Fair Labor Standards Act?

COUNTERSTATEMENT OF THE CASE

Petitioner, Diana K. Powell, on May 26, 1958, filed a complaint in the United States District Court for the District of Columbia against The Washington Post Company and James P. Mitchell, Secretary of Labor for the United States of America.

The complaint is set forth at pages 2-4 of the Joint Appendix as printed for the use of the court below. In substance, it alleges that Petitioner was employed as a part-time clerk by The Washington Post Company from April 24, 1954 to April 25, 1958; that on or about

February 21, 1958, and at times thereafter, she called to the attention of officers of The Washington Post Company the fact that, in her opinion, certain clerks (other than herself) were working in excess of forty hours a week without receiving compensation for overtime in violation of Section 7 of the Fair Labor Standards Act, 29 U.S.C. § 207, and that true records of the hours worked by such clerks were not being kept by The Washington Post Company as required by Section 11(c) of the Act, 29 U.S.C. § 211(c); that thereafter The Washington Post Company discriminated against her and, "upon being informed of her intent to submit the controversy to the Department of Labor, discharged her on April 25, 1958, in violation of Section 15(a)(3) of said Act"; and that Petitioner requested investigation of these matters by the Department of Labor by letter dated April 30, 1958. Petitioner in her complaint demanded that The Washington Post Company be required to reinstate her "in adequate and suitable employment" and to pay her "such compensation for time unemployed as the Court may deem just."

On June 16, 1958, The Washington Post Company moved to dismiss the action against it on the ground that the Court lacked jurisdiction under the Fair Labor Standards Act of 1938, as amended, and because the complaint failed to state a claim against it upon which relief could be granted. (J.A. 4-5). The District Court heard oral argument on this motion, and, on October 1, 1958, filed a Memorandum Opinion. (J.A. 15-17; App. 1a-2a). On October 21, 1958, the District Court entered an order granting the motion (J.A. 17-18; App. 3a), from which order this appeal was taken to the United States Court of Appeals for the District of Columbia Circuit. (J.A. 19).

On August 4, 1958, Petitioner moved to join James P. Mitchell, Secretary of Labor, as an involuntary plaintiff under Rule 19(a) of the Federal Rules of Civil Procedure, to require the Secretary to bring an action for her reinstatement against The Washington Post Company, and for judgment on the pleadings. (J.A. 9-11). This motion, opposed by The Washington Post Company (J.A. 11) and by James P. Mitchell, Secretary of Labor, was denied by the District Court in its order filed on October 21, 1958. (J.A. 17-18).

Respondent James P. Mitchell, Secretary of Labor, filed a motion for summary judgment on August 29, 1958 (J.A. 11-12), attaching to his motion as Exhibit A an affidavit of Charles A. Hennessey, Administrator's Field Representative, in which Mr. Hennessey stated that he made an investigation of the operations of The Washington Post Company on June 27, 1958, and "was unable to obtain or find any evidence that the Company had violated any of the provisions of the Fair Labor Standards Act with respect to Diana K. Powell during the period of her employment there as a part-time employee who worked but a few hours per day" and that "it appeared from the data secured that Diana K. Powell's employment terminated with the abolition of her job. . . ." (J.A. 12-13). Miss Powell filed an affidavit in which she admitted that this investigation was made. (J.A. 13-15). The District Court granted summary judgment for the Secretary of Labor in its order filed on October 21, 1958 (J.A. 17-18; App. 3a), from which order this appeal was taken to the United States Court of Appeals for the District of Columbia Circuit. (J.A. 19).

Petitioner's appeal was heard by the United States Court of Appeals for the District of Columbia Circuit

(Chief Judge Prettyman, Judges Fahy and Burger) which on April 23, 1959, affirmed, *per curiam*, the judgment of the District Court. (App. 4a-7a). Referring to that part of the judgment of the District Court granting summary judgment for the Secretary of Labor, the Court of Appeals stated in its opinion:

> "Section 11(a) of the Fair Labor Standards Act provides in part: 'Except as provided in section 12, the Secretary of Labor shall bring all actions under section 17 to restrain violations of this Act.' In so far as plaintiff's prayer relates to action by the Secretary to restrain violations, the answer is that the appeal is to his discretion, as the quoted provision of the statute makes clear. In so far as she prayed that the Secretary be required to investigate, the answer is undisputed that such an investigation was made." (App. 5a).

Referring to that part of the judgment of the District Court granting the motion to dismiss filed by Respondent The Washington Post Company, the Court of Appeals stated in its opinion:

> "In so far as The Washington Post Company is concerned, the Fair Labor Standards Act makes no provision for a civil action by an employee to recover damages for discharge in violation of the Act or for reinstatement. The statute does provide that employees may recover in a civil action unpaid minimum wages or unpaid overtime compensation, plus an additional equal amount as liquidated damages. But our appellant did not claim unpaid minimum wages or unpaid overtime compensation." (App. 5a-6a).

REASONS FOR OPPOSING THE GRANT OF THE WRIT

I.

THE COURT OF APPEALS CORRECTLY HELD THAT THE DISTRICT COURT HAD NO JURISDICTION OVER THIS ACTION WHICH PETITIONER BROUGHT UNDER THE FAIR LABOR STANDARDS ACT AGAINST RESPONDENT THE WASHINGTON POST COMPANY FOR REINSTATEMENT.

A. Congress, in providing means for the enforcement of the Fair Labor Standards Act, gave the Secretary of Labor exclusive authority to bring all actions for reinstatement of employees allegedly discharged or in other manner discriminated against in violation of section 15(a)(3) of the Act.

This Court recently had occasion to distinguish between the different means that Congress has provided for the enforcement of the Fair Labor Standards Act:

> "The Act sets up four means for enforcement. Section 16(a), 29 U.S.C. § 216(a), provides for criminal prosecution of willful violators. Section 16(b), 29 U.S.C. § 216(b), gives individual employees rights of actions in civil suits to recover unpaid minimum wages, overtime compensation and certain liquidated damages. Section 16(c), 29 U.S.C. § 216(c), allows the Secretary of Labor to bring such an action in behalf of such employees provided the suit does not involve 'an issue of law which has not been settled finally by the courts.' Section 17, 29 U.S.C. § 217, of course, provides for injunctions." *Mitchell* v. *Lublin, McGaughy & Associates*, 358 U.S. 207, 214 (1959).

Petitioner does not allege that she was not paid the minimum wage or overtime compensation. She alleges that she was discharged because she threatened to complain to the Secretary of Labor that other employees were not paid overtime compensation and that her discharge was therefore in violation of Section 15(a)(3) of the Act, 29 U.S.C. § 215(a)(3). Petitioner sought

in her complaint (J.A. 2-4) an order directing Respondent The Washington Post Company to reinstate her with "such compensation for time unemployed as the Court may deem just."

Petitioner's prayer for reinstatement would require the District Court to issue a mandatory injunction under Section 17 of the Act, 29 U.S.C. § 217, which provides that "the district courts . . . shall have jurisdiction, for cause shown, to restrain violations of Section 15." *Bowe* v. *Judson C. Burns, Inc.*, 137 F.2d 37, 39 (3d Cir. 1943).

However, Section 11(a) of the Act, 29 U.S.C. § 211(a), which authorizes the Administrator to "investigate such facts, conditions, practices, or matters as he may deem necessary or appropriate to determine whether any person has violated any provision of this Act," provides:

> "Except as provided in section 12 [which relates to child labor], *the Secretary of Labor shall bring all actions under section 17 to restrain violations of this Act.*" (Emphasis added.)

Petitioner contends that this does not mean that the Secretary of Labor shall bring all actions under Section 17 to restrain violations of Section 15(a)(3) of the Act because, in her opinion, such an interpretation would be inconsistent with "the protection of the rights of employees." (Pet. 7). To support her theory she cites at pages 7-8 of her Petition a statement made by Wage and Hour Administrator William R. McComb before the House Committee on Education and Labor, found in *Hearings Before the House Committee on Education and Labor*, 81st Cong., 1st Sess. pt. 1, at 114 (1949). She has tailored Mr. McComb's statement so

as to make it appear that an employer who violates any provision of the Fair Labor Standards Act can be sued either by the employee affected or by the Secretary of Labor at his or her request. Actually, the statement refers only to Section 16(c) of the Act, 29 U.S.C. § 216(c), which allows (but does not require) the Secretary of Labor to bring a civil action to recover unpaid minimum wages or overtime compensation for an employee who is reluctant to bring the action himself under Section 16(b), 29 U.S.C. § 216(b).

Petitioner fails to grasp the distinction between an action for unpaid minimum wages and overtime compensation, which may be brought either by the employee under Section 16(b), 29 U.S.C. § 216(b), or by the Secretary of Labor under Section 16(c), 29 U.S.C. § 216(c), and an action to enjoin a violation of Section 15, 29 U.S.C. § 215. When Senate and House conferees favorably reported the Fair Labor Standards Act on June 11, 1938, they made it clear that actions to enjoin violations of Section 15 differed from actions under Section 16 and were to be brought only by the Secretary of Labor:

> "Section 11 of the conference agreement provides for investigations, inspections, and records. Its provisions do not substantially depart from the corresponding provisions of the House amendment except that 'Administrator' is substituted for the 'Secretary of Labor.' The Administrator is directed to utilize the divisions and bureaus of the Department of Labor, of which the Wage and Hour Division itself is a part, for investigations, the gathering of data, and inspections necessary under the Act. *The Administrator, except in connection with the child labor provisions, is given power to bring all actions to enjoin violations of section 15.*" (Emphasis added.)

See *H.R. Rep.* No. 2738, 75th Cong. 3rd Sess. (1938), at page 32.

The intent of Congress is perfectly clear. If investigation by the Administrator (or by his designated representatives) pursuant to Section 11(a) of the Act discloses a violation of Section 15, the Secretary is empowered to bring an action in his official capacity[1] for injunctive relief.[2] This right of action is exclusive in the Secretary.

The precise question presented by Petitioner has been decided by the United States Courts of Appeals for the Second and Third Circuits. In *Bowe* v. *Judson C. Burns, Inc.*, 137 F.2d 37 (3d Cir. 1943), the plaintiffs had sued their employer under Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), to recover unpaid overtime compensation. One month after bringing this action the plaintiffs brought a second action, alleging that their employer had threatened them with discharge and their union had threatened them with expulsion if they did not

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[1] The authority of the Administrator was transferred to the Secretary of Labor on May 24, 1950, under Reorganization Plan No. 6.

[2] Thus, in Mitchell v. Equitable Beneficial Life, Health & Accident Co., 13 W.H. Cas. 564, 606 (D. N.J. 1958), cited by Petitioner at pages 9-10 of her Petition, the court recited in its Conclusions of Law at 13 W.H. Cas. 607:

> "Pursuant to section 17 of the Fair Labor Standards Act, the court has jurisdiction of this action, *brought by the Secretary of Labor* for violation of section 15(a)(3) of that Act.
>
> • • •
>
> "*The Secretary of Labor*, in instituting an action under section 15(a)(3) of the Fair Labor Standards Act, is entitled to injunctive relief and, as ancillary to such relief, he may demand reinstatement of the employee discharged. . . ." (Emphasis added.)

abandon their action under Section 16(b) of the Act. When they refused they were discharged by their employer and expelled by their union. The plaintiffs asked the court to restrain their employer from discharging or otherwise discriminating against them. Since Section 15(a)(3) of the Act, 29 U.S.C. § 215(a)(3), provides that it shall be unlawful for "any person" to discriminate against any employee because the employee has instituted any proceeding under the Act, the plaintiffs also asked the court to order their reinstatement as members in good standing of the union. The Court of Appeals for the Third Circuit held at 137 F.2d 39 that the complaint was properly dismissed as to both the employer and the union:

> "Section 17, 29 U.S.C.A. § 217, gives jurisdiction to the district courts of the United States of suits to restrain violations of the provisions of Section 15 of the Act, but Section 11(a), 29 U.S.C.A. § 211(a), states 'Except as provided in Section 12 of this Act (relating to child labor), the Administrator shall bring all actions under section 17 * * * to restrain violations of sections 1-15 * * *.' *We think it is plain from this language that the right of the administrator to bring an action for injunctive relief is an exclusive right.* Employee actions may be maintained only under Section 16(b) to recover back wages and liquidated damages. We conclude therefore that the court below may not restrain the defendants as sought by the plaintiffs.
>
> "The plaintiffs pray that they may be reinstated as members of the union in good standing. This is the obverse of the prohibition of discharge or discrimination embodied in Section 15(a)(3) of the Act. To grant this prayer of the plaintiffs would require the court below to issue a mandatory injunction. In view of the provision of Section 11(a) which we have referred to we think that

> the court below may not order the union to reinstate the plaintiffs. *Such relief would be substantially the equivalent of relief based on Section 15(a)(3) to be given by a district court on the application of the administrator under Section 11(a).* Since jurisdiction in the case at bar is based solely on the provisions of Section 17 of the Act, it follows that the order of the court below must be affirmed. . . ." (Emphasis added.)

Considering the claim by an employee that he was discharged because he joined in a suit to recover overtime compensation from his employer, and that his discharge was therefore in violation of Section 15(a)(3) of the Fair Labor Standards Act, the United States Court of Appeals for the Second Circuit held in *Roberg v. Henry Phipps Estate*, 156 F.2d 958 (2d Cir. 1946), that the employee's demand for an injunction against this allegedly discriminatory discharge was properly dismissed by the trial court. The court stated at 156 F.2d 963:

> "The trial court correctly dismissed the prayer for injunction against discriminatory practice by one of the plaintiffs on the ground that the Administrator has exclusive authority to bring such an action. Section 17 of the Act, 29 U.S.C.A. § 217, gives the district court jurisdiction to restrain unfair employment practices which violate § 15(a) of the Act, 29 U.S.C.A. § 215(a); but § 11(a) explicitly vests the right of action for injunction in the Administrator alone. *Bowe v. Judson C. Burns, Inc.*, 3 Cir., 137 F.2d 37."

Petitioner condemns but does not attempt to distinguish these cases. (Pet. 8).

While Petitioner did not contend in the court below and does not now contend that the ruling of the District Court that "the Fair Labor Standards Act makes

no provision for a civil action by an employee allegedly discriminately discharged in violation of Section 15(a)(3) of the Act to recover damages for such discharge" (App. 2a) was erroneous, the Court of Appeals for the District of Columbia Circuit specifically affirmed this ruling. (App. 5a). It may be noted that the Court of Appeals for the Second Circuit has also held in a suit brought by a discharged employee that the Fair Labor Standards Act "confers no jurisdiction upon the court over a civil action to recover damages for the discharge of an employee in violation of the statute." *Bonner* v. *Elizabeth Arden, Inc.*, 177 F.2d 703, 704-705 (2d Cir. 1949).

On the basis of the foregoing, it is clear that the District Court had no jurisdiction over Petitioner's action for reinstatement and for damages. Accordingly, the complaint was properly dismissed.

B. SINCE THE SECRETARY OF LABOR INVESTIGATED PETITIONER'S COMPLAINT THAT SHE WAS DISCHARGED FROM HER EMPLOYMENT IN VIOLATION OF SECTION 15(a)(3) OF THE FAIR LABOR STANDARDS ACT, IT CANNOT BE SAID THAT HIS DECISION NOT TO BRING AN ACTION FOR HER REINSTATEMENT WAS AN ABUSE OF DISCRETION. THE SECRETARY COULD NOT BE INVOLUNTARILY JOINED AS A PARTY PLAINTIFF AND REQUIRED TO BRING THIS ACTION.

1. THE DECISION NOT TO BRING AN ACTION FOR PETITIONER'S REINSTATEMENT WAS WITHIN THE DISCRETION OF THE SECRETARY OF LABOR.

Petitioner contends that the Secretary's refusal to bring an action against Respondent The Washington Post Company for her reinstatement was an "arbitrary and capricious evasion of duty . . ." (Pet. 3). The question of whether the Department of Labor must make an investigation upon receipt of a complaint[3] is

[3] Section 11(a), 29 U.S.C. § 211(a), provides that the Administrator "*may* . . . investigate such facts, conditions, practices, or matters as he *may* deem necessary or appropriate to determine whether any person has violated any provision of this Act. . . ." (Emphasis added.)

not presented here because Petitioner admits at page 11 of her Petition that "the affidavit of Mr. Hennessey, the investigator (J.A. 12) shows . . . that he investigated [alleged] wage and hour violations [of Respondent The Washington Post Company] as to the Petitioner . . . ." The court below observed that an affidavit which Petitioner filed in the District Court (J.A. 13-15) "verified the fact that such an investigation had been made." (App. 5a). Since there is nothing in the Fair Labor Standards Act, in its legislative history, in the decisions of the courts or in reason to require the Secretary of Labor to bring an action against an employer "whenever an allegation of violation is received by the Department" (App. 2a), summary judgment for the Secretary was proper.[4]

2. RULE (19a) OF THE FEDERAL RULES OF CIVIL PROCEDURE DOES NOT ENABLE PETITIONER TO DO INDIRECTLY WHAT SHE CANNOT DO DIRECTLY.

The purpose of Rule 19(a) of the Federal Rules of Civil Procedure is not to enable one who does not have a cause of action to bring an action by simply joining another who does have a cause of action. Rule 19(a) "presupposes that the complainant has a standing and cause of action *in his own right and name*, for the determination of which such [other] persons are necessary or indispensable parties." *Coast v. Hunt Oil Co.*, 96 F. Supp. 53, 60 (W.D. La. 1951), *aff'd*, 195 F.2d 870 (5th Cir.), *cert. denied*, 344 U.S. 836 (1952).

In that case, Coast, the plaintiff, owned a forty-nine percent interest in a partnership. His partner, one Querbes, the owner of the remaining fifty-one percent

[4] Doubtless the question of the Secretary's discretion will be discussed fully in the brief of Respondent James P. Mitchell, Secretary of Labor.

interest, refused either to join in or to permit the use of the firm name as plaintiff in a suit initiated by Coast against two competing oil companies for violation of the antitrust laws. The defendants moved to dismiss for failure to state a cause of action upon which relief could be granted. Under Louisiana law an action on a partnership claim cannot be brought by a partner but only by the partnership in its own name through all partners. *Coast* v. *Hunt Oil Co., supra*, at 96 F. Supp. 59. It is "a fictitious being, distinct from the partners composing it," and a distinct legal entity. *Coast* v. *Hunt Oil Co., supra*, at 195 F.2d 871. Since the plaintiff had no standing to bring the action in his own right and name, 96 F. Supp. at 60, the District Court for the Western District of Louisiana granted the defendants' motion to dismiss. Affirming the dismissal of the action, the Court of Appeals for the Fifth Circuit disposed of the interpretation of Rule 19(a) of the Federal Rules of Civil Procedure advanced by Petitioner in the instant case:

> "Appellant insists however that under Rule 19(a), Fed. Rules Civ. Proc., 28 U.S.C.A., he has the right to make the partnership an involuntary plaintiff or to make Querbes a party defendant for the purpose of causing the action to be maintained by the partnership. The difficulty is that the plaintiff himself has no standing, joint or otherwise, to maintain this action. Rule 19(a), supra, relates to joinder of parties, it permits a plaintiff under proper circumstances to require another person or persons to join with him, *but it makes no provision for a plaintiff to require another person to maintain an action vested solely in such other person, even though its maintenance might result in benefit to the plaintiff.* In speaking of the application of this rule as to joinder of

> a party as 'involuntary plaintiff', Professor Moore says, 'The doctrine can properly be applied only where there is such a relationship that the absent party must allow the use of his name as plaintiff', 3 Moore's Federal Practice (2nd ed.) page 2149. We think the rulings of the district court were correct, and its judgment is therefore affirmed." (195 F.2d at 872) (Emphasis added.)

In the instant case, it is clear that Petitioner had no standing to bring an action under the Fair Labor Standards Act for reinstatement. The cause of action is vested exclusively in the Secretary of Labor. 29 U.S.C. §§ 211(a), 215(a)(3), 217; *Roberg* v. *Henry Phipps Estate, supra; Bowe* v. *Judson C. Burns, Inc., supra.* Nor had Petitioner standing to bring an action under the Fair Labor Standards Act for damages. *Bonner* v. *Elizabeth Arden, Inc., supra.* Under Rule 19(a) of the Federal Rules of Civil Procedure, the Secretary of Labor cannot be required to maintain an action vested solely in him, "even though its maintenance might result in benefit to the plaintiff." *Coast* v. *Hunt Oil Co., supra,* at 195 F.2d 872.

II.

THE QUESTIONS RAISED IN THE PETITION ARE NOT OF THE CHARACTER SPECIFIED BY RULE 19 OF THE RULES OF THIS COURT AS APPROPRIATE FOR REVIEW HERE ON WRIT OF CERTIORARI.

The decision of the court below interprets the Fair Labor Standards Act in accordance with the plain meaning of its language, with the expressed intent of Congress and with the applicable decisions of other circuits. Moreover, the decision of the court below is consistent with the decisions of this Court. Thus, there are

not only no "special and important reasons" for reviewing the decision of the court below on writ of certiorari (see Rule 19(1) of the Rules of this Court), but there are no reasons at all for such review.

CONCLUSION

In view of the foregoing, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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June 18, 1959